

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 20815
[REDACTED],)	
)	DECISION
Petitioner.)	
_____)	

On October 18, 2007, the staff of the Income Tax Audit Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer) proposing income tax, penalty, and interest for the taxable year 2003 in the total amount of \$11,996.

On December 15, 2007, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not respond to the Tax Commission's hearing rights letter and has provided nothing further for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The Income Tax Audit Bureau (Bureau) received information that showed the taxpayer sold real property in Idaho in 2003. The Bureau researched the Tax Commission's records and found the taxpayer did not file an Idaho individual income tax return for that year. Idaho Code section 63-3026A(3)(ii) states that income shall be considered derived from or relating to sources within Idaho when such income is attributable to or resulting from the ownership or disposition of any interest in real or tangible personal property located in Idaho.

The Bureau sent the taxpayer a letter asking him about the sale of the Idaho property and his requirement to file an Idaho income tax return. The taxpayer did not respond. The Bureau determined the taxpayer was required to file an Idaho income tax return and prepared a return for the taxpayer. The Bureau sent the taxpayer a Notice of Deficiency Determination which the taxpayer protested.

The taxpayer stated he was not required to file an Idaho income tax return because he did not receive any “gross income” for the year 2003. The taxpayer stated there are only specific “sources” which produce gross income that is taxable under federal law and since Idaho’s income tax is based on the Internal Revenue Code, it follows that he has no gross income for Idaho income tax purposes. The taxpayer cited various sections of the Idaho Code, the Internal Revenue Code, and the Code of Federal Regulations to support his theory.

The Bureau recognized the taxpayer’s arguments as those similar to arguments made in various tax protestor movements. Therefore, the Bureau referred the matter for administrative review. The Tax Commission reviewed the case and provided the taxpayer with an opportunity to provide any additional statements or documents for the Tax Commission to consider in re-determining the Notice of Deficiency Determination. The taxpayer did not respond. Therefore, the Tax Commission decided the matter based upon the information available.

The taxpayer owned property in northern Idaho. On February 14, 2003, the taxpayer sold the property for \$115,000. Idaho Code section 63-3026A states that the disposition of property located in Idaho constitutes Idaho source income. Idaho Code section 63-3030 states that any nonresident individual having gross income from Idaho sources in excess of \$2,500 in the taxable year is required to file an Idaho income tax return.

On the surface, it is clear that the taxpayer met Idaho’s filing requirement. However, in the determination of gross income on the sale of property, the property owner generally has a basis in the property (purchase price). In this case, the taxpayer did not provide any information as to his basis in the property. The Bureau requested the information, and after the taxpayer appealed the Bureau’s determination, the Tax Commission gave the taxpayer an opportunity to provide that information. Nevertheless, the taxpayer failed to provide any information on his

basis in the property. Consequently, the Tax Commission is left to speculate what the taxpayer's basis was if he had one at all.

The taxpayer did not argue that he was not allowed a basis in the property sold. He argued that he had no gross income as defined in Internal Revenue Code (IRC) section 61. He stated that according to Idaho Code section 63-3002, it was the intent of the Idaho legislature to make the provisions of the Idaho income tax law as identical to the federal income tax law as possible. He stated the Idaho Code defines gross income to mean gross income as defined in IRC section 61(a). The taxpayer then pulled the word "source" from the general definition context of IRC section 61(a) and stated that it ties IRC section 61 to Subchapter N, Part I of the IRC relating to the determination of tax based on income from sources within or without the United States. This subchapter discusses the taxation of nonresident aliens and foreign corporations. The taxpayer claims that because of this the gross income provisions are not applicable to citizens of the United States. And since Idaho is tied to the federal definition of gross income, he has no gross income for Idaho income tax purposes.

This argument is commonly known as the foreign-source income argument. The courts have rejected this argument time and time again. In Reese v. United States, 24 F.3d 228, 231 (Fed. Cir. 1994), the court stated, "an abiding principle of federal tax law is that, absent an enumerated exception, gross income means all income from whatever source derived." In Great-West Life Assur. Co. v. United States, 678 F.2d 180, 183 (Ct. Cl. 1982), the court stated that "[t]he determination of where income is derived or 'sourced' is generally of no moment to either United States citizens or United States corporations, for such persons are subject to tax under I.R.C. § 1 and I.R.C. § 11, respectively, on their worldwide income." In Takaba v. Commissioner, 119 T.C. 285, 295 (2002), the court rejected the taxpayer's argument that income

received from sources within the United States is not taxable income, stating that “[t]he 861 argument is contrary to established law and, for that reason, frivolous.”

The cases cited above are applicable to the federal definition of gross income. Idaho follows the definition of gross income as stated in IRC section 61(a). Therefore, if the taxpayer had gains derived from dealings in property (IRC 61(a)(3)) and that property was located in Idaho (Idaho Code section 63-3026A), he had gross income from Idaho sources. And if, as in this case, the taxpayer is a nonresident of Idaho and his gross income exceeded \$2,500 in the taxable year, an individual income tax return is required to be filed with the state of Idaho.

The taxpayer’s argument did not persuade the Tax Commission that he had no gross income for the year 2003. The evidence available shows that the taxpayer sold property located in Idaho for \$115,000. Whether the taxpayer received the full sales price of the property or a lesser amount due to selling costs and his basis is unknown. If a taxpayer is unable to provide adequate proof of any material fact upon which a deduction depends, no deduction is allowed and that taxpayer must bear his misfortune. Burnet v. Houston, 283 U.S. 223, 51 S.Ct. 413 (1931). Since the taxpayer has not provided any information on the sale of the property, the Tax Commission is not obliged to guess or estimate the taxpayer’s basis or expenses. Therefore, the Tax Commission upholds the Bureau’s determination of the taxpayer’s Idaho income tax liability.

The Bureau added interest and penalty to the taxpayer’s tax liability. The Tax Commission reviewed those additions and finds them appropriate and in accordance with Idaho Code sections 63-3045 and 63-3046.

WHEREFORE, the Notice of Deficiency Determination dated October 18, 2007, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty, and interest (interest is computed to July 15, 2008):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2003	\$8,093	\$2,023	\$2,188	\$12,304

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer's right to appeal this decision is enclosed.

DATED this _____ day of _____, 2008.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2008, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]

Receipt No.
